

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1125 (Delegates Adams and Ghrist)
 Ways and Means

Election Law - Push Polls - Requirements and Prohibitions

This bill prohibits a person from authorizing or conducting a “push poll” unless, during each call, the caller discloses specified information. The bill also requires certain persons conducting push polls to have a designated agent in the State. **The bill takes effect June 1, 2022.**

Fiscal Summary

State Effect: General fund expenditures increase by at least \$191,500 in FY 2023 and by ongoing amounts in future years. Special fund revenues may increase, beginning in FY 2023.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
SF Revenue	-	-	-	-	-
GF Expenditure	\$191,500	\$174,700	\$179,600	\$184,200	\$189,100
Net Effect	(\$191,500)	(\$174,700)	(\$179,600)	(\$184,200)	(\$189,100)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not expected to materially affect local government finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: The bill includes a “push poll” within the definition of campaign material under State campaign finance law and prohibits a person from authorizing or conducting a push poll unless, during each call, the caller discloses specified information, including information identifying those responsible for the call, in a clear and intelligible manner,

with the information repeated in a clear and intelligible manner at the request of the respondent. It is not a violation of the bill if the respondent voluntarily terminates the call or asks to be called back before all required disclosures are made, unless the caller in any way encourages the respondent to terminate the call before the disclosures are made.

The bill also requires that a person, before conducting a push poll, have a designated agent, identified in a filing with the State Board of Elections (SBE), for the purpose of service of process, notice, or demand. The requirement does not apply to an entity already lawfully registered to conduct business in the State.

The bill authorizes SBE to impose a civil penalty of up to \$500 for each violation of the bill's provisions, under existing civil penalty authority of SBE. In addition, pursuant to existing penalty provisions applicable to violations of State campaign finance law, an unknowing violation of the bill is subject to a civil penalty of up to \$5,000, and a knowing and willful violation is a misdemeanor and subject to a fine of up to \$25,000 and/or imprisonment for up to one year.

“Push poll” means a paid telephone survey that references a candidate other than in a basic preference question and in which:

- a list or directory is used, exclusively or in part, to select respondents belonging to a particular subset or combination of subsets of the population, based on demographic or political characteristics, including race, sex, age, ethnicity, or party affiliation;
- the survey fails to make demographic inquiries on factors such as age, household income, or status as a likely voter in a manner sufficient to allow for the tabulation of results based on a relevant subset of the population consistent with standard polling industry practices;
- the pollster or polling organization does not collect or tabulate survey results;
- the survey prefaces a question regarding support for a candidate with an untrue statement; and
- the survey is primarily for the purpose of suppressing or changing the voting position of the call recipient.

“Push poll” includes (1) a call placed from locations in the State and (2) a call placed from another state or country to an individual in the State. “Push poll” does not include a survey supporting a particular candidate that fails to reference another candidate other than in a basic preference question.

The bill does not apply to a push poll or political telephone solicitation or contact if the individuals participating in the call knew each other before the call was made. The bill may

not be construed to prohibit legitimate election practices, including (1) voter identification; (2) voter facilitation activities; or (3) scientific polling research.

Current Law: “Campaign material” means any material that (1) contains text, graphics, or other images; (2) relates to a candidate, a prospective candidate, or the approval or rejection of a question or prospective question; and (3) is published, distributed, or disseminated. “Campaign material” includes (1) a qualifying paid digital communication; (2) any other material transmitted by or appearing on the Internet or other electronic medium; (3) an oral commercial campaign advertisement; and (4) an automated or prerecorded oral communication.

Each item of campaign material generally must contain an authority line that states (1) as to campaign material published, distributed, or disseminated by a campaign finance entity, the name and address of the treasurer of each campaign finance entity responsible for the campaign material and the name of each campaign finance entity for which each treasurer is acting and (2) as to campaign material published, distributed, or disseminated by any other person, the name and address of the person responsible for the campaign material. The authority line may omit an address that is on file with SBE or a local board.

Campaign material that is published or distributed in support of or in opposition to a candidate, but is not authorized by the candidate, must include the statement “This message has been authorized and paid for by (name of payor or any organization affiliated with the payor), (name and title of treasurer or president). This message has not been authorized or approved by any candidate.”

With the exception of billboards and signs, each campaign finance entity and each independent expenditure or electioneering communication registrant responsible for, publisher of, and distributor of an item of campaign material must keep a sample copy of the item for at least one year after the general election next following the date the item was published or distributed.

SBE is required to adopt (and has adopted) regulations governing the application of statutory campaign material requirements to campaign material transmitted through electronic media.

State Expenditures: General fund expenditures increase by at least \$191,529 in fiscal 2023, which accounts for a 30-day start-up delay from the bill’s June 1, 2022 effective date. This estimate reflects the cost of hiring two investigators, one within SBE, to investigate violations pursuant to SBE’s civil penalty authority, and one within the Office of the State Prosecutor (OSP), to investigate violations under OSP’s authority to investigate criminal offenses under State election laws and to seek civil penalties for unknowing violations of State campaign finance law. SBE and OSP indicate that numerous

complaints may need to be investigated under the bill and that the additional work cannot be handled by existing staff. Expenditures may increase by a greater amount for an additional prosecutor within OSP, depending on the number of cases that need to be prosecuted. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$173,053
Operating Expenses	<u>18,476</u>
Total FY 2023 State Expenditures	\$191,529

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

State Revenues: Special fund revenues increase, beginning in fiscal 2023, to the extent monetary penalties are imposed for violations of the bill’s provisions. Penalty revenues are deposited in the Fair Campaign Financing Fund, which holds funds for public campaign financing of gubernatorial tickets under the Public Financing Act.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Office of the State Prosecutor; State Board of Elections; Department of Legislative Services

Fiscal Note History: First Reader - March 6, 2022
fnu2/hlb

Analysis by: Scott D. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510